

**ROBERT L. BROWN III**

ATTORNEY AT LAW

1005 SOUTH MAIN STREET  
CORBIN, KENTUCKY 40701

(606) 528-3073  
FAX (606) 528-3289

December 14, 2004

**RECEIVED**  
DEC 15 2004  
PUBLIC SERVICE  
COMMISSION

Public Service Commission  
Ms. Anita Mitchell  
Executive Director  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40602

**RE: CITIPOWER, LLC**

Dear Ms. Mitchell:

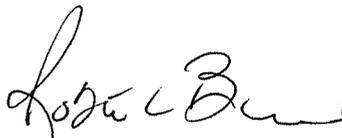
Enclosed herewith are the following documents:

1. Certificate of Formation (May 28, 1996).
2. Secretary's Certificate regarding Operating Agreement (September 26, 1996).
3. Certificate of Good Standing - Kentucky Secretary of State.
4. Agreement and Plan of Reorganization draft.
5. Merger Agreement draft.

Please file these documents in Case Number 2004-00444.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

  
Robert L. Brown III

RLB/ca  
Enclosures

CERTIFICATE OF FORMATION

OF

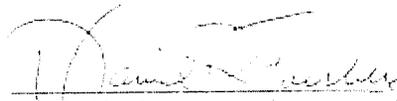
CITIPOWER, L.L.C.

1. The name of the limited liability company is Citipower, L.L.C. (the "Company")
2. The address of the registered office of the Company in the state of Delaware is Corporation Trust Center, 1209 Orange St, Wilmington 19801, County of New Castle, and the name of the registered agent for service of process of the Company in the State of Delaware at such address is The Corporation Trust Company
3. The date of dissolution of the Company shall be April 30, 2046.

IN WITNESS WHEREOF, the authorized person whose name is set forth below has executed this Certificate of Formation this 28th day of May, 1996.

FORSBERG OIL CO, INC

By

  
Daniel R. Forsberg

SECRETARY'S CERTIFICATE  
OF  
CITIPOWER, L.L.C.  
AS TO BOARD OF DIRECTORS RESOLUTIONS  
CERTIFICATE OF FORMATION  
OPERATING AGREEMENT

The undersigned, Peter D.W. Heberling, being the Secretary of Citipower, L.L.C (the "Company"), a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware, DOES HEREBY CERTIFY as follows:

- 1 Attached hereto as Exhibit A is a true, correct and complete copy of the Certificate of Formation of the Company as in effect on the date hereof;
- 2 Attached hereto as Exhibit B is a true, correct and complete copy of the Operating Agreement of the Company as in effect on the date hereof;
- 3 Attached hereto as Exhibit C is a true, correct and complete copy of resolutions duly adopted by the Board of Directors of the Company at a meeting held on June 28, 1996, and said resolutions are still in full force and effect and have not been modified, amended, or rescinded as of the date hereof.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 26 day of September, 1996.

  
Name: Peter D.W. Heberling  
Title: Secretary

**Organization Number** 0547727  
**Name** CITIPOWER, L.L.C.  
**Company Type** FLC - Foreign Limited Liability Company  
**Status** A - Active  
**Standing** G - Good  
**State** DE  
**File Date** 11/7/2002  
**Authority Date** 11/7/2002  
**Expiration Date** 4/30/2046  
**Last Annual Report** 7/9/2004  
**Principal Office** % CORPORATION TRUST COMPANY  
1209 ORANGE STREET  
WILMINGTON, DE 19801  
**Registered Agent** CT CORPORATION SYSTEM  
KENTUCKY HOME LIFE BUILDING  
LOUISVILLE, KY 40202

**Current Officers**

**Member** Daniel R Forsberg

**Incorporators and Initial Directors**

**Organizer** DANIEL R. FORSBERG

**This organization has no assumed names**

**Certificates Available**

Certificate of Authorization

Certificate of Registered Agent (Domestic and Foreign)

Click on a certificate title to purchase it. Certificates are \$10.00, payable by credit card or prepaid account. They are stored and returned as PDF documents. You must have Adobe PDF Reader to print the document.

**AGREEMENT AND PLAN OF REORGANIZATION**

This Agreement and Plan of Reorganization (this "Agreement") is dated as of November 1, 2004 by and among Citi Energy, L.L.C. ("Citi Energy"), Citipower, L.L.C. ("Citipower") and CP Acquisition, L.L.C. ("Merger Sub", together with Citipower, the "Constituent LLCs").

WHEREAS, Citi Energy is a Delaware limited liability company duly organized and existing under the laws of the State of Delaware, with authorized capital interests consisting of Class A units, Class B units, Class C units and Class D units, of which only one Class A Unit has been issued and is owned by Citipower, and there are and will be outstanding no options or other rights to purchase or acquire any units of interests of Citi Energy at the Effective Date of the Reorganization (as both of such terms are hereinafter defined) other than the rights set forth in this Agreement;

WHEREAS, Citipower is a limited liability company duly organized and existing under the laws of the State of Delaware, with authorized capital interests consisting of Class A units, Class B units, Class C units and Class D units, of which Class A units, Class B units, Class C units, and Class D units (the "Citipower Units") are and will be issued and outstanding immediately prior to the Effective Date, and there are and will be outstanding no options or other rights to purchase or acquire any units of interests of Citipower at the Effective Date other than as set forth in this Agreement;

WHEREAS, Merger Sub is a limited liability company duly organized and existing under the laws of the State of Delaware, with authorized capital interests consisting of one unit which has been issued to Citi Energy and is and will be issued and outstanding immediately prior to the Effective Date, and there are and will be outstanding no options or other rights to purchase or acquire any units of interests of Merger Sub at the Effective Date;

WHEREAS, Citigas, L.L.C. ("Citigas") is a limited liability company duly organized and existing under the laws of the State of Kentucky, with authorized capital interests consisting of one unit which has been issued to Citipower and is and will be issued and outstanding immediately prior to the Effective Date, and there are and will be outstanding no options or other rights to purchase or acquire any units of interests of Citigas on the Effective Date other than as set forth in this Agreement;

WHEREAS, LBU, L.L.C. ("LBU") is a limited liability company duly organized and existing under the laws of the State of Delaware, with authorized capital interests consisting of Class A units and Class B units, of which Class A units and Class B units are and will be issued and outstanding immediately before the Effective Date and (such Class A units being owned by Citipower), and there are and will be outstanding no options or other rights to purchase or acquire any units of interests of LBU on the Effective Date other than as set forth in this Agreement; and

WHEREAS, the Constituent LLCs deem it desirable and in the best interests of said companies that Citipower be merged with and into Merger Sub, and each of the parties hereto deems it desirable and in the best interests of said parties and the holders of their capital interests that the ownership of Citi Energy, Citipower, Merger Sub, Citigas and LBU be reorganized under and pursuant to the laws of the States of Delaware and Kentucky such that all of the issued and outstanding capital interests of Citipower and Citigas shall each be owned by Citi Energy and all of the Class A units of LBU shall be owned by Citi Energy (together with the Merger, the “Reorganization”), and the Boards of Directors of Citi Energy and Citipower, the Manager of Merger Sub have approved and adopted this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and for the purpose of prescribing the terms and conditions of the Merger and the Reorganization, the mode of carrying the same into effect, the manner and basis of converting the Citipower Units into the units of Citi Energy and issuing Citi Energy units to the former Citipower Unit holders, the manner and basis for constituting Citigas and LBU as subsidiaries of Citi Energy, and such other details and provisions as are deemed necessary or desirable by the parties hereto, the parties hereto have agreed and do hereby agree, subject to the approval and adoption of this Agreement by the Boards of Directors of Citi Energy and Citipower and the Manager of Merger Sub, and subject to the conditions hereinafter set forth, as follows:

#### ARTICLE I

In accordance with the provisions of Chapter 18 of the General Corporation Law of the State of Delaware and [cite laws of Kentucky], Citipower shall assign all of the issued and outstanding capital interests of Citigas and all of the Class A units of LBU to Citi Energy. The identity, existence, purpose, powers, objects, franchises, rights and immunities of each of Citigas and LBU shall continue unaffected and unimpaired by the Reorganization.

#### ARTICLE II

A. Citi Energy will make available for delivery to all of Citipower’s Unit holders the Citi Energy Class A units, Class B units, Class C units and Class D units into which the Citipower Units outstanding immediately prior to the Effective Date shall be converted upon the Merger pursuant to paragraph B below (the “Citi Energy Units”).

B. On the Effective Date, Citipower shall be merged into Merger Sub (the “Merger”) under and pursuant to the General Corporation Law of the State of Delaware and a Merger Agreement ( the “Merger Agreement”) in the form attached hereto as Exhibit A and each Class A Unit, Class B Unit, Class C Unit and Class D Unit of Citipower which shall be issued and outstanding immediately prior to the Effective Date shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one Class A Unit, Class B Unit, Class C Unit and Class D Unit of Citi Energy, respectively.

Each holder of a Citipower Unit of record at the Effective Date shall be entitled, upon the surrender to Citi Energy of the certificate or certificates for his or her Citipower Units for cancellation to receive a certificate representing the number of Citi Energy Units into which his or her Citipower Units shall have been converted in the Merger. Until so surrendered each certificate formerly representing Citipower Units of shall be deemed for all corporate purposes to evidence the number of Citi Energy Units into which the number of Citipower Units theretofore represented by such certificate shall have been converted in the Merger. Unless and until any such certificate shall be so surrendered, the holder of such certificate shall not have any right to receive payment of any dividends on such Citi Energy Units. Following such surrender, there shall be paid to the record holder of each certificate for Citi Energy Units issued in exchange therefor (i) the amount of any dividends which theretofore shall have become payable with respect to the number of Citi Energy Units represented by such certificate issued in exchange upon such surrender, such amount to be paid on the surrender of such Citipower Unit certificate, but without interest, and (ii) the amount of any dividends with respect to such number of Citi Energy Units, the record date for the determination of the Unit holders entitled to which shall be prior to the surrender of such certificate representing Citipower Units but the payment date of which shall be subsequent to such surrender, such amount to be paid on such payment date. If any certificate for such Citi Energy Units is to be issued in a name other than that in which the certificate for Citipower Units surrendered for exchange is registered, it shall be a condition for such exchange that the certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the person requesting such exchange shall pay to Citi Energy any transfer or other taxes required by reason of the issuance of certificates for such Citi Energy Units in a name other than the registered holder of the certificate surrendered, or establish to the reasonable satisfaction of Citi Energy that such tax has been paid or is not payable.

C. The name of Merger Sub shall be changed to Citipower, L.L.C. upon the effectiveness of the Merger and by virtue of the Merger without any further action by either Merger Sub or Citipower. Merger Sub shall be the surviving limited liability company of the Merger and the separate corporate existence of Citipower shall cease upon the Merger. The Certificate of Formation and the Operating Agreement of Merger Sub as in existence immediately prior to the Effective Date will remain the Certificate of Formation and the Operating Agreement of the surviving limited liability company, subject to such change of name. The purpose, powers, objects, franchises, rights and immunities of the former Citipower shall continue unaffected and unimpaired by the Merger.

D. The Citi Energy Class A Units, Class B Units, Class C Units and Class D Units shall have the same number, terms, rights and privileges that their respective class of Citipower Units had prior to the Merger, and the Operating Agreement of Citi Energy shall contain identical terms, conditions, rights and privileges to those of the Citipower Operating Agreement. The directors and officers of Citipower in office immediately prior to the Effective Date shall continue in office as, and shall constitute, the directors and officers of Citi Energy for the remainder of their terms or until their respective successors shall be elected or appointed and qualified.

ARTICLE III

As promptly as practicable after the execution and delivery of this Agreement by each of the parties thereto, the Merger Agreement shall be certified, signed and acknowledged in accordance with the provisions of the Delaware General Corporation Law. It shall thereafter be filed in the Office of the Secretary of State of Delaware in accordance with the Reorganization Agreement. The term "Effective Date" as used herein shall mean the date on which this Agreement is so filed. The Reorganization shall become effective on the date that the Merger Agreement is filed with the Office of the Secretary of State of Delaware. Merger Sub shall record the Merger Agreement in the Office of the Recorder of New Castle County, Delaware, as promptly as practicable after the filing of the Merger Agreement in the Office of the Secretary of State of Delaware.

ARTICLE IV

A. For the convenience of the parties hereto, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

B. At any time prior to the Effective Date, the parties hereto may, by written instrument, amend or supplement any of the provisions herein so long as any such amendment or supplement does not adversely affect the rights of the Citipower Unit holders hereunder.

C. This Agreement shall be governed by the laws of the States of Delaware and Kentucky, as applicable.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

[Corporate Seal]

CITI ENERGY, L.L.C.

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Daniel R. Forsberg, Chief Executive Officer

[Corporate Seal]

CITIPOWER, L.L.C.

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Daniel R. Forsberg, Chief Executive Officer

[Corporate Seal]

CP ACQUISITION, L.L.C.

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Daniel R. Forsberg, Chief Executive Officer

## MERGER AGREEMENT

This Merger Agreement (this "Agreement") is dated as of November , 2004 between Citipower, L.L.C. ("Citipower") and CP Acquisition, L.L.C. ("Merger Sub"), each being a Delaware limited liability company.

WHEREAS, Citipower was formed on , 1995, its principal office is at , Wilmington, Delaware and its authorized capital interests consist of Class A Units, Class B Units, Class C Units and Class D Units, of which Class A Units, Class B Units, Class C Units and Class D Units have been issued and are outstanding;

WHEREAS, Merger Sub was formed on November , 2004, its principal office is at , Wilmington, Delaware and its authorized capital interests consist of one unit which has been issued and is owned by Citi Energy, L.L.C., a wholly owned subsidiary of Citipower("Citi Energy");

WHEREAS, simultaneously herewith Citi Energy, Citipower, Merger Sub, Citigas, L.L.C. and LBU, L.L.C. have entered into an Agreement and Plan of Reorganization (the "Reorganization Agreement") providing for, among other things, the issuance of the units referred to in paragraph 4 hereof; and

WHEREAS, the parties hereto deem it advisable and in the best interests of such companies and their unit holders that Citipower be merged into Merger Sub as provided herein (the "Merger");

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. As promptly as practicable after the execution and delivery of the Reorganization Agreement by each of the parties thereto, this Agreement shall be certified, signed and acknowledged in accordance with the provisions of the Delaware General Corporation Law. It shall thereafter be filed in the Office of the Secretary of State of Delaware in accordance with the Reorganization Agreement. The term "Effective Date" as used herein shall mean the date on which this Agreement is so filed.

2. On the Effective Date, Citipower shall be merged into Merger Sub and the separate corporate existence of Citipower shall cease. Merger Sub shall be the surviving company and shall change its name to Citipower, L.L.C. and shall continue to be governed by the laws of Delaware.

3. From and after the Effective Date, the authorized capital interests of the surviving company shall be one common unit, no par value. From and after the Effective Date, the Certificate of Formation of Merger Sub shall continue as the Certificate of Formation of the surviving company until further amended as provided by law.

4. On the Effective Date, each Class A Unit, Class B Unit, Class C Unit and Class D Unit of Citipower which shall be issued and outstanding immediately prior to the Effective Date shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one Class A Unit, Class B Unit, Class C Unit and Class D Unit of Citi Energy, respectively. Each holder of a Citipower unit of record on the Effective Date shall be entitled, upon the surrender to Citi Energy of the certificate or certificates for his or her Citipower units for cancellation, to receive a certificate representing the number of Citi Energy units into which his or her Citipower units shall have been converted in the Merger. Until so surrendered each certificate formerly representing Citipower units shall be deemed for all corporate purposes to evidence the number of Citi Energy units into which the number of Citipower units theretofore represented by such certificate shall have been converted in the Merger. Unless and until any such certificate shall be so surrendered, the holder of such certificate shall not have any right to receive payment of any dividends on such Citi Energy units. Following such surrender, there shall be paid to the record holder of each certificate for Citi Energy units issued in exchange therefore (i) the amount of any dividends which theretofore shall have become payable with respect to the number of Citi Energy units represented by such certificate issued in exchange upon such surrender, such amount to be paid on the surrender of such Citipower unit certificate, but without interest, and (ii) the amount of any dividends with respect to such number of Citi Energy units, the record date for the determination of the unit holders entitled of which shall be prior to the surrender of such certificate representing Citipower units but the payment date of which shall be subsequent to such surrender, such amount to be paid on such payment date.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

[Corporate Seal]

CITIPOWER, L.L.C.

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Daniel R. Forsberg, Chief Executive Officer

By: \_\_\_\_\_  
Daniel R. Forsberg, Chief Executive Officer

[Corporate Seal]

CP ACQUISITION, L.L.C.

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Daniel R. Forsberg, Chief Executive Officer

**CITIPOWER, L.L.C.**

**Secretary's Certificate**

The undersigned, \_\_\_\_\_, Secretary of Citipower, L.L.C., a Delaware limited liability company (the "Company") and one of the merging limited liability companies mentioned in the foregoing Merger Agreement (the "Agreement"), on behalf of the Company certifies as follows:

The Agreement has been adopted pursuant to subsection 251(g) of the General Corporation Law of the State of Delaware and the conditions specified in the first sentence of such subsection have been satisfied.

IN WITNESS WHEREOF, the undersigned hereby certifies to the foregoing under the seal of the Company.

\_\_\_\_\_  
Secretary of Citipower, L.L.C.

[Corporate Seal]

State of North Carolina }  
County of Guilford }

Be it remembered that on this \_\_\_\_\_ day of November, 2004, personally came before me, \_\_\_\_\_, a Notary Public in and for the County and State as aforesaid. Daniel R. Forsberg, Chief Executive Officer of Citipower, L.L.C., a party to the foregoing Agreement and \_\_\_\_\_, Secretary of Citipower, L.L.C., known to me personally to be such, and acknowledged the said Agreement to be the act and deed of said company, and the facts stated therein are true.

Given under my hand and seal of office the day and year aforesaid.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

POSTAGE WILL BE PAID BY ADDRESSEE  
NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES  
MAILED FROM ZIP CODE

BROWN & HILL, PLLC  
ATTORNEYS AT LAW  
1005 S MAIN STREET SUITE 101  
CORBIN, KENTUCKY 40701

TO:

Public Service Commission  
Ms. Anita Mitchell  
Executive Director  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40602

1 8 200

